

MAY 05 2021

MICHAEL J. KILLIAN
FRANKLIN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR FRANKLIN COUNTY

GABRIEL PORTUGAL, BRANDON
PAUL MORALES, JOSE TRINIDAD
CORRAL, and LEAGUE OF UNITED
LATIN AMERICAN CITIZENS.

Plaintiffs,
v.

FRANKLIN COUNTY, a Washington
municipal entity, CLINT DIDIER,
RODNEY J. MULLEN, LOWELL B.
PECK, in their official capacities as
members of the Franklin County Board of
Commissioners,

Defendants.

No. 21-250210-11

AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF UNDER THE
WASHINGTON VOTING RIGHTS
ACT

I. INTRODUCTION

1.1 This action challenges the at-large electoral system used by Franklin County (The County) in general elections and the districting scheme used in primary elections. The current election scheme dilutes the votes of Latino/a voters in Franklin County, denying them the equal opportunity to elect candidates of their choice in general elections in violation of the Washington Voting Rights Act ("WVRA" or "the Act"), RCW 29A.92.060.

1.2 The Latino community has been growing, now accounting for about one third of the citizen voting age population (CVAP) in Franklin County.

1.3 Latino voters in the County have been unable to elect candidates of their choice for decades, despite voting cohesively.

1.4 This is because the hybrid district-based and at-large election model both cracks and dilutes the minority group's voting power. The district-based primary elections break up the cohesive and compact Latino community by splitting voters across three districts.

1.5 The Latino community is large enough and sufficiently geographically compact to comprise a majority-minority district, but instead, voters are separated to dilute the votes cast by Latino citizens.

1.6 Then, the at-large general election further dilutes Latino voting power, because there is racially polarized voting during county elections which operates to block Latino voters from electing candidates of their choice.

1.7 Combined, this leaves Latino voters in Franklin unable to effectively participate in the political process.

1.8 The electoral scheme in Franklin county deprives Latino voters of their equal right to elect candidates of their choice as guaranteed by the WVRA.

II. PARTIES

2.1 Plaintiffs GABRIEL PORTUGAL, BRANDON PAUL MORALES, and JOSE TRINIDAD CORRAL ("Individual Plaintiffs") are Latino registered voters who reside in Franklin County.

2.2 Plaintiff GABRIEL PORTUGAL is an American citizen, over the age of 18, is eligible to vote, and is a registered voter in Franklin County, Washington.

2.3 Plaintiff BRANDON PAUL MORALES is an American citizen, over the age of 18, is eligible to vote, and is a registered voter in Franklin County, Washington.

2.4 Plaintiff JOSE TRINIDAD CORRAL is an American citizen, over the age of 18, is eligible to vote, and is a registered voter in Franklin County, Washington.

2.5 Plaintiffs LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC) is the oldest and largest national Latino civil rights organization in the United States.

2.6 LULAC is a non-profit membership organization with a presence in the State of Washington, with three membership chapters within the state and one in Franklin County.

2.7 LULAC participates in civic engagement activities, such as voter registration, voter education, and voter turnout efforts throughout Washington. LULAC's mission is to educate voters, including expending resources to ensure that LULAC membership and Latinos are able to have equitable access to the franchise.

2.8 Defendant FRANKLIN COUNTY (“the County”) is a Washington municipal corporation and a political subdivision within the meaning of and subject to the requirements of the WVRA. *See* RCW 29A.92.010. The County maintains a system in which candidates for Commissioner are first voted on through a district-based primary and then elected through a County-wide at-large election.

2.9 Defendants CLINT DIDIER, RODNEY J. MULLEN (aka "ROCKY MULLEN"), and LOWELL B. PECK (aka "BRAD PECK") (collectively "the Commissioners") are current members of the Commission. The Commission has the authority to change the County's electoral system to remedy a violation of the WVRA. The Commissioners are each sued in their official capacity only.

III. JURISIDCTION AND VENUE

3.1 This court has subject matter jurisdiction over this Complaint because Washington state courts have jurisdiction over claims brought under the WVRA. RCW 29A.92.

1 3.2 Venue is proper in Franklin County pursuant to RCW 29A.92.090 and RCW
2 36.01.05(2).
3

4 IV. FACTS

5 A. The Franklin County Commission

6 4.1 The Commission is the governing body of Franklin County and is composed of
7 three commissioners. Each commissioner represents one of three geographic districts.

8 4.2 Franklin County currently uses a hybrid voting system; the County uses a district-
9 based model for primary elections and an at-large system for general elections.

10 4.3 This means that candidates are first nominated in a primary election by voters of
11 the district in which they reside.
12

13 4.4 Then, voters from all districts in the County vote for and elect the commissioners
14 during the general election.

15 4.5 County commissioners are elected to serve 4-year staggered terms, and elections
16 are held every two years.
17

18 4.6 Districts 1 and 2 vote on commissioners during presidential elections, and District
19 3 votes on commissioners during midterm elections. The most recent election for a Commission
20 seat was held on November 3, 2020 for Districts 1 and 2.

21 4.7 As the County's legislative authority, the Commission is responsible for the
22 overall administration of County government, including adoption of annual budgets, enactment
23 of ordinances, and appointments to advisory boards and commissions.
24

25 4.8 The Commission is also tasked with adopting the district maps for Franklin
26 County elections.

27 4.9 The Commission is responsible for redistricting the county.
28

1 4.10 The Commission oversees programs and services related to public health,
2 environmental protection, housing, public works, and other matters that affect the interests and
3 well-being of Latino residents.

4 **B. Franklin County Demographics**

5 4.11 According to the 2019 American Community Survey (ACS) 1-Year Estimates,
6 Franklin County has a total population of 95,222 and a Latino population of 51,001.

7 4.12 According to the 2018 ACS 5-Year Estimates, Latino citizens make up over one
8 third, or 34.4%, of Franklin County's citizen voting age population (CVAP).

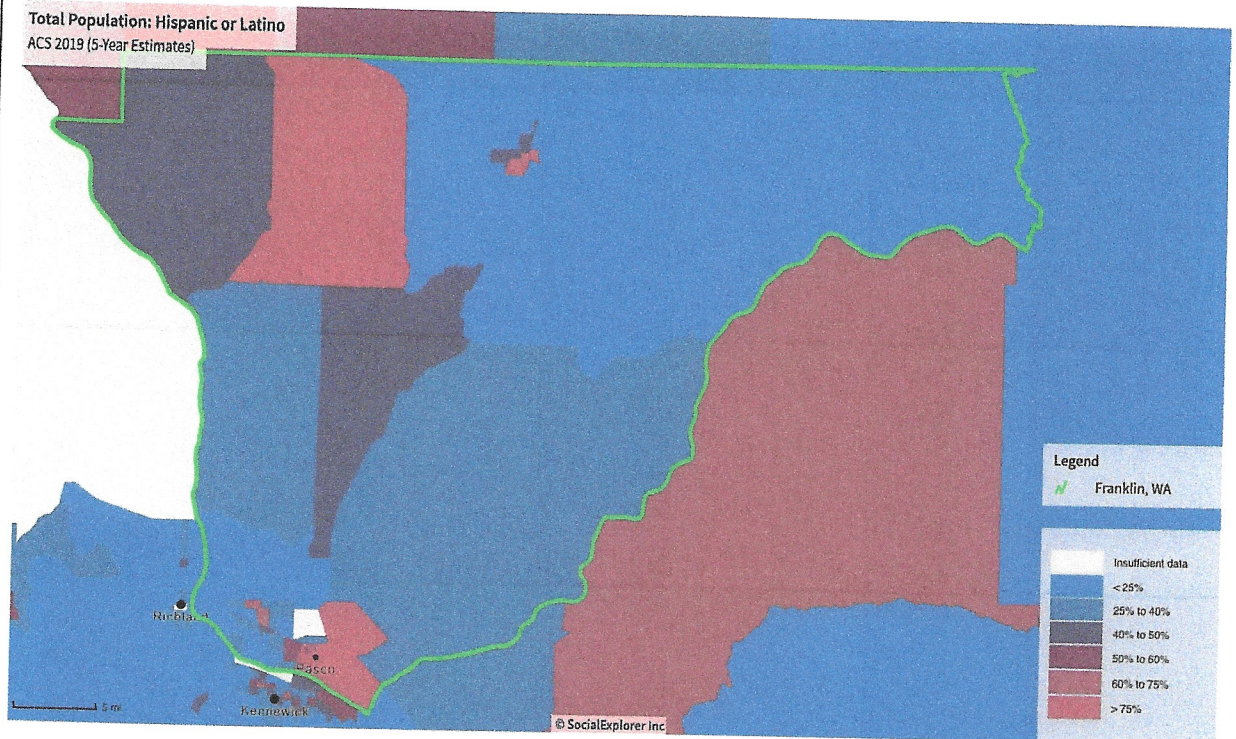
9 4.13 Over the past twenty years, Franklin County has grown rapidly, and the
10 demographics have shifted.

11 4.14 Latino population has grown, fueling the expansion of the County's CVAP.

12 4.15 Latino residents of Franklin County are largely geographically concentrated in the
13 Cities of Pasco, Mesa, and Connell.

14 4.16 The Latino CVAP for these cities is 35.59%, 32.09%, and 22.32%, respectively,
15 according to the 2018 ACS 5-Year Estimates.

16 4.17 **The following map** shows the geographic distribution of the Latino community
17 in Franklin County, where areas that are purple or red are more Latino and areas that are blue
18 have a lower Latino population.



13 C. The Washington Voting Rights Act

14 4.18 The Washington Voting Rights Act was enacted in 2018 by the state legislature in
15 order to ensure that, “minority groups have an equal opportunity to elect candidates of their
16 choice or influence the outcome of an election.” RCW. 29A.92.005.

17
18 4.19 Any electoral system that denies such groups to elect candidates of their choice is,
19 “inconsistent with the right to free and equal elections” guaranteed by the Washington State
20 Constitution. RCW 29A.92.005.

21 4.20 The Washington Voting Rights Act gives local governments the opportunity to
22 remedy discrimination in election schemes and is designed to, “promote equal voting opportunity
23 in certain political subdivisions.” 2018 Wash. Sess. Law Ch. 112 (codified at RCW 29A.92).

24 4.21 The WVRA requires that district maps afford minority voters an equal
25 opportunity to elect candidates of their choice. RCW 29A.92.020.
26
27
28

1 4.22 Political subdivisions are prohibited from maintaining election schemes that dilute
2 or abridge this electoral opportunity. RCW 29A.92.020.

3 4.23 The WVRA prohibits diluting the voting power or influence of protected classes
4 through at-large elections. RCW 29A.92.030.

5 4.24 At-large elections dilute the voting power of minorities because, “where minority
6 and majority voters consistently prefer different candidates, the majority, by virtue of its
7 numerical superiority, will regularly defeat the choices of minority voters.” *Thornburg v.*
8 *Gingles*, 478 U.S. 30, 48 (1986).

9 4.25 Combined with racially polarized voting, where the minority population votes for
10 different candidates than the majority population, the at-large scheme works to dilute the voting
11 power of minority populations.

12 4.26 Where there is racially polarized voting in a political subdivision and the votes of
13 a racial minority are diluted, that subdivision is in violation of the WVRA. RCW 29A.92.020.

14 **D. Elections in Franklin County Exhibit Polarized Voting**

15 4.27 Elections in Franklin County exhibit polarized voting along racial lines.

16 4.28 Polarized voting occurs when members of different racial or ethnic groups prefer
17 different candidates than other racial or ethnic groups.

18 4.29 White, non-Hispanic voters and Latino voters demonstrate consistent patterns of
19 voting for different candidates.

20 4.30 Candidates who win a majority of the vote in high-density Latino voting precincts
21 receive very low support in high-density white precincts.

1 4.31 This split, in which candidates who win a majority of the vote in high-density
2 Latino voting precincts but receive low or very low support in high-density white precincts is
3 emblematic of racially polarized voting.
4

5 4.32 This pattern is consistent across different elections in Franklin County.

6 4.33 This pattern is consistent across the county in different elections.

7 4.34 This pattern is consistent across different election years in Franklin County.

8 4.35 Latino voters in Franklin County are politically cohesive and consistently vote as
9 a bloc for common candidates of choice.
10

11 4.36 Latino voters' candidates of choice are rarely elected, and Latino voters have been
12 unable to elect a candidate of their choice under the county's at-large election scheme.

13 4.37 Because Latino voters do not constitute a majority, White voters frequently vote
14 as a bloc for other non-Latino preferred candidates, and there are not enough crossover White
15 votes to account for the different voting preferences between the Latino and White populations.
16

17 4.38 Franklin County Commission elections from 2008 to 2020 all exhibit racially
18 polarized voting.

19 4.39 Since 2008, no Latino preferred candidate has been elected to the County
20 Commission, even though Latino preferred candidates have run.

21 4.40 In 2020, Ana Ruiz Peralta ran in District 2 during the primary, won, and advanced
22 to the general election.
23

24 4.41 Within District 2, Peralta was the preferred candidate in high-density Latino
25 precincts.

26 4.42 In Pct 004, Peralta won 75% of the vote.
27
28

1 4.43 She also won a majority of the vote share in the high-density Latino precincts, Pct
2 006 (68% won), Pct 009 (67%), Pct 002 (65%), and Pct 005 (64%).

3 4.44 Peralta lost the vote in majority-white voting precincts, such as Pct 100, where
4 only 8% voted for Peralta, Pct 101 (9% voted for Peralta), Pct 096 (10%), Pct 095 (13%), and Pct
5 092 (17%).

6
7 4.45 The difference in candidate preference between Latino and white voting precincts
8 is quite large and is statistically significant.

9 4.46 Racially polarized voting was also observed in the 2018 County Commission
10 election between Clint Didier and Zahra Roach.

11
12 4.47 Roach, the candidate of choice in majority-Latino voting precincts, won 82% in
13 Pct 004, 77% in Pct 006 and Pct 012.

14 4.48 Roach also received majority support in nearly every high-density Latino
15 precinct.

16 4.49 Didier, by contrast, won countywide, receiving the most support from majority-
17 white precincts.

18
19 4.50 Didier won over 90% of the vote in multiple majority-white voting precincts.

20 4.51 Examining the 2018 general election through a larger, county-wide perspective
21 demonstrates extremely strong evidence of racially polarized voting.

22 4.52 Similar patterns have likewise emerged over time, as high-density Latino
23 precincts have reported vote results that are the polar opposite of high-density white precincts.

24 4.53 In 2012, Al Yenney lost countywide in the November general election, won a
25 majority of the vote in Latino precincts, but lost badly in precincts with substantial non-Latino
26 populations.
27
28

1 4.54 In 2008, Neva Corkrum, the Latino preferred candidate, lost the countywide
2 election in November but won a clear majority of the vote in high-density Latino voting
3 precincts.

4 4.55 Corkrum won as much as 74% of the vote in majority-Latino precincts, but still
5 lost badly, garnering less than 20% of the vote in majority-white precincts.

6 4.56 The same patterns of racially polarized voting have emerged across elections in
7 Franklin County for other local, legislative, and statewide offices.

8 4.57 There is no doubt that a clear and consistent pattern of racially polarized voting
9 exists in Franklin County.

10 4.58 The Latino population in Franklin County is geographically large.

11 4.59 The Latino population in Franklin County is sufficiently compact.

12 4.60 The Latino population in Franklin County are politically cohesive.

13 4.61 The white population is cohesive in voting and acts to block Latino voters from
14 being able to elect Latino preferred candidates due to the at-large election scheme.

15 4.62 This precinct analysis of voter trends reveals that Latino-preferred candidates are
16 losing county elections because the at-large election system dilutes the minority vote.

17 4.63 While minority-preferred candidates receive the most votes in high percentage
18 Latino precincts, they are obstructed from winning the general election because of the increased
19 participation of majority-white precincts that vote differently.

20 4.64 In addition to the evidence presented above, the pattern persists on a local level.
21 The Latino population of Pasco alone, the largest concentration of Latino voters in the county,
22 shows political cohesion.

1 4.65 The City of Pasco even conceded this fact in its consent decree to resolve *Glatt v.*
2 *City of Pasco*.

3 4.66 The city conceded that three *Gingles* factors were met: (1) the minority group is
4 sufficiently large and geographically compact to constitute a majority in a single-member
5 district; (2) the minority group is politically cohesive; and (3) the majority group votes
6 sufficiently as a bloc to enable it, in the absence of special circumstances, “usually to defeat the
7 minority’s preferred candidate.” *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986).
8

9 4.67 Further evidence shows that Latino voters in Franklin County do vote as a bloc,
10 coalescing around candidates of their choice.
11

12 4.68 Following the City of Pasco’s 2017 change to a hybrid district-based system,
13 Latinos now occupy three out of seven city council seats, including two out of the three Latino
14 majority-minority districts. Two of these council members have also taken on the role of Pasco’s
15 mayor and mayor pro tem.
16

17 4.69 The fact that no Latino candidate of choice was able to win a contested Pasco city
18 council election prior to the change from at-large to district-based elections shows the significant
19 power the at-large system had to dilute the vote of Latino citizens in Franklin County.
20

21 4.70 Latino voters are able to show that there is racially polarized voting occurring
22 during Franklin County Commissioner elections.
23

24 4.71 Because there is racially polarized voting, under the WVRA, there is evidence
25 sufficient to show that Latino voters are suffering from vote dilution.
26

27 4.72 Latino voters across Franklin County suffer from vote dilution in violation of the
28 WVRA due to the County’s at-large election system.

1 **E. Franklin County's At-Large Electoral System Dilutes the Voting Rights of Latinos**
2 **and Denies Latinos an Equal Opportunity to Elect Candidates of their Choice**

3 4.73 Franklin County's hybrid district and at-large election model dilutes the voting
4 power of the Latino community and denies Latino voters the equal opportunity to elect
5 candidates of their choice.

6 4.74 The County's district plan cracks the Latino voting population between the three
7 districts.

8 4.75 While much of the Latino population is centered in and around the City of Pasco,
9 residents here are divided across Franklin County's three districts. District 1 is centered within
10 the City of Pasco, but districts 2 and 3 also include areas within the City of Pasco.

11 4.76 Franklin County Commissioner Brad Peck noted in a February 4, 2020
12 commission meeting that, "homogenous" East Pasco, "the predominantly Latino east Pasco," has
13 historically been, "carved up into pieces to make the other districts balanced."
14

15 4.77 Cracking the East Pasco Latino community such that the cohesive community is
16 split into different districts impedes the ability of voters to rally behind a candidate of choice in
17 primary elections.
18

19 4.78 If the current district system were used as the map for single-member district
20 based elections, such cracking would still prevent Latino voters from electing candidates of their
21 choice.
22

23 4.79 The County's election scheme dilutes the Latino vote such that Latino voters are
24 unable to elect candidates of their choice, despite representing a sizeable portion of Franklin
25 County's CVAP.
26

27 4.80 Latino voters in Franklin County have not been able to elect a candidate of their
28 choice to the County Commission in the past 20 years.

1 4.81 There are no Latino preferred candidates currently serving on the Franklin County
2 Board of Commissioners.

3 4.82 There has never been a Latino elected to serve on the Franklin County Board of
4 Commissioners.

5 4.83 There are other factors that indicate the dilutive and discriminatory effects of
6 Franklin County's electoral system.

7 4.84 The existence of historic and present racial discrimination in the jurisdiction adds
8 an additional layer in understanding how the challenged voting systems or methods are
9 discriminatory.

10 4.85 In determining whether there is a history or pattern of present discrimination,
11 courts consider a variety of factors, including: the history of discrimination; the use of electoral
12 devices or other voting practices or procedures that may enhance the dilutive effects of at large
13 elections; the extent to which members of a protected class bear the effects of past discrimination
14 in areas such as education, employment, and health, which hinder their ability to participate
15 effectively in the political process; and the use of overt or subtle racial appeals in political
16 campaigns.

17 4.86 Franklin County has a history of ethnic and racial tension between the county's
18 white and Latino communities.

19 4.87 According to historians, East Pasco was once the only part of the city open to
20 minorities.

21 4.88 In the past there were efforts by white residents to target and remove non-Whites
22 from the City of Pasco entirely.

1 4.89 This historic discrimination has had long lasting effects on Latinos and other
2 minorities in Franklin County.

3 4.90 The factors of race and poverty combined to create patterns of discrimination that
4 have endured in Pasco for generations.

5 4.91 Racial tensions between white and Latino communities in the County persist
6 today.

7 4.92 On February 10, 2015, local Pasco police, itself not racially reflective of the
8 community, shot seventeen times and killed Antonio Zambrano-Montes after he was allegedly
9 throwing rocks at cars.

10 4.93 Weeks of demonstrations calling for justice and more scrutiny over Pasco's
11 policing of the Latino community followed.

12 4.94 Even county officials have publicly declared racially insensitive viewpoints. In
13 2016, a Franklin County official shared an image of a white farmer with the caption, "When is
14 white history month?" and on the corner of the image, there was a white raised fist used by white
15 supremacists with the words "100% White, 100% Proud."

16 4.95 Franklin County officials have expressed anti-immigrant sentiment against the
17 county's immigrant population—an overwhelming majority of which is Latino.

18 4.96 When current county commissioner, Clint Didier, was asked about immigration
19 while running for his seat, he stated he wanted to secure borders and that until then, "[w]e work
20 with ICE."

21 4.97 Law enforcement officials within the County have also sought ways to collaborate
22 with immigration enforcement officials, including receiving Spanish language training from U.S.
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1 Border Patrol agents, which has undermined trust between them and the overwhelming Latino
2 immigrant community.

3 4.98 In addition to the above, Latino voters in Franklin County endure the widespread
4 effects of past and present discrimination in areas such as education, employment, and health.

5 4.99 This discrimination impacts their ability to engage in the local political process.

6 4.100 U.S. Census statistics reveal a number of discrepancies between the white and
7 Latino communities in the county.
8

9 4.101 Latino residents in Franklin are much less likely to have a high school diploma
10 than white Franklin residents. Only 7.1% of Latinos in Franklin have a bachelor's degree or
11 higher, compared to 29.9% of whites. 7.5% of Franklin's white population lives below the
12 poverty line, but more than one out of five Latinos in the County live below the poverty line.
13

14 4.102 The disparities between the white population and the Latino community in
15 Franklin County are also pervasive with respect to job earnings and access to health care.
16

17 4.103 White Franklin County residents also earn substantially more at their jobs on
18 average than do Latino residents.

19 4.104 These statistics, taken together with anecdotal information regarding
20 discrimination faced by the Latino community, exemplifies how the Latino community
21 experiences racial discrimination and the effects of having a lack of representation in county
22 government.
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1 **V. CAUSE OF ACTION: WASHINGTON VOTING RIGHTS ACT**

2 5.1 Plaintiffs repeat, replead, and incorporate by reference, as though fully set for the
3 in this paragraph, all the allegations of this Complaint.

4 5.2 A violation of the WVRA is established when elections in a political subdivision
5 exhibit polarized voting and members of a protected class do not have equal opportunity to elect
6 candidates of their choice as a result of vote dilution or abridgement.

7 5.3 Elections in Franklin County exhibit polarized voting along racial lines.

8 5.4 Latino voters in Franklin County do not have equal opportunity to elect
9 candidates of their choice because the County's hybrid district-based and at-large electoral
10 system illegally dilutes Latino votes.

11 5.5 On October 12, 2020, Plaintiffs properly notified Franklin County by letter that
12 the County was in violation of the WVRA and that Plaintiffs intended to challenge the County's
13 electoral system unless the County adopted an appropriate remedy. RCW 29A.92.060. *See*
14 Attached Exhibit A.

15 5.6 Franklin County officials declined to work in good faith with Plaintiffs,
16 discussing redistricting in County Commission meetings without sending notice to or seeking
17 input from Plaintiffs.

18 5.7 After receipt of Plaintiff's letter, Franklin County Commissioners predominantly
19 discussed redistricting in closed, executive sessions.

20 5.8 Despite the Commissioners' initial response to the notice letter, in which
21 Commissioners stated they would respond to Plaintiffs, the next follow-up communication was
22 only received 149 days or four months and 26 days later.

1 5.9 Commissioners did not work with Plaintiffs to implement a remedy pursuant to
2 RCW 29A.92.070.

3 5.10 180 days have elapsed since Plaintiffs notified the County of its WVRA violation.

4 5.11 Within the 180 days and since, the County has not obtained a court order stating
5 that it has adopted a remedy that complies with RCW 29A.92.020.
6

7 5.12 As registered voters who reside in Franklin County and an organization with
8 members who are registered voters who reside in Franklin County, Plaintiffs have a right to file
9 this suit and the suit is timely.
10

11 5.13 Plaintiffs are entitled to the remedies available under the WVRA.

12 **VI. REQUEST FOR RELIEF**

13 WHEREFORE, Plaintiffs respectfully request that the court:

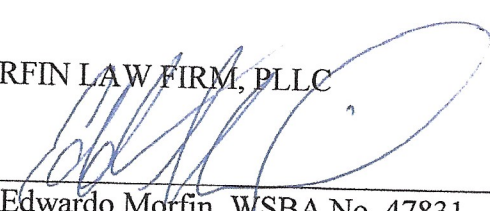
- 14 1. Declare that Franklin County's hybrid district-based and at-large electoral system for
15 electing members to the County Commission violates the WVRA, RCW 29A.92.020;
16
- 17 2. Enjoin Defendants, their agents and successors in office, and all persons acting in
18 concert with, or as an agent of, any Defendants in this action from administering,
19 implementing, or conducting any future elections in Franklin County under the
20 current hybrid district-based and at-large electoral system;
21
- 22 3. Order the implementation of an electoral system for the County Commission that
23 complies with RCW 29A.92.020 and other provisions of the WVRA;
- 24 4. Redraw the County district map in a manner that does not dilute the vote of Latino
25 citizens;
- 26 5. Order that all future elections in Franklin County comply with the WVRA;
27
28

1 6. Grant Plaintiffs' attorneys' fees, costs, and litigation expenses pursuant to
2 29A.92.130; and

3 7. Grant any other relief that the Court may deem just and equitable.
4

5 DATED this 5th day of May, 2021.
6

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27 *Motions for admission *pro hac vice* forthcoming
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